# IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 110 OF 2005

MORTO JAGANATH SINAI KENKRE(SIN.DEC.) REP. THROUGH L.RS., ....Appellant

Versus

PADMAWATI DAMODAR AUDI ALIAS KRISHNEM DAMODAR AUDI (SIN.DEC.) THROUGH L.RS., AND ORS., ....Respondents

Shri M. S. Sonak, Advocate for the appellants.

Coram:- R. M. LODHA, J.

Date:- 27th October, 2005

P.C.

Heard Mr. M. S. Sonak, the learned Counsel for the appellants.

2. The appellants are the plaintiffs. They raised the grievance that the defendants have encroached upon 3 metres of the land on the east of their house. According to the plaintiffs, they are owners of the suit strip of land.

3. The Trial Court recorded the findings that the original plaintiff failed to prove that he was owner of the disputed strip of land. The Trial Court also held that the plaintiff failed to prove that the defendants encroached upon the said strip of land. The Trial Court, thus, dismissed the plaintiff's suit. The matter was carried in appeal by the plaintiff unsuccessfully.

4. The learned Counsel for the appellants (legal representatives of the original plaintiff) submits that the defendants set up the case that they were owners of the disputed strip of land by adverse possession and that

meant that the plaintiff's ownership was accpeted by them. He would submit that in this view of the matter, dismissal of the suit by the Courts below on the ground that the plaintiff failed to prove his ownership, was unjustified.

5. The submission of the learned Counsel for the appellants has no substance. It was the plaintiff who went to the Court seeking dispossession of the defendants from the disputed strip of land on the ground that he was owner of the said property and that the defendants have encroached upon that land. No document of title was placed on record by the plaintiff that could establish his title over the subject-property. The fact that the defendants set up their title in the said property by adverse possession cannot be said to establish the plaintiff's ownership over the suit property.

6. As a matter of fact, the parties were not at issue whether the defendants have acquired title over the said property by adverse possession. No issue in that regard was framed. The burden was on the plaintiff to establish that he was owner of the subject-strip of land. He failed to establish that the subject-strip of land was owned by him and that it has been encroached upon by the defendants.

7. The findings are concluded on facts. No substantial question of law arises.

8. The second appeal is dismissed in limine.

R. M. LODHA, J.

ssm.